IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 3.2.2005.

CORAM:

THE HONOURABLE MR.JUSTICE V.KANAGARAJ

WRIT PETITIONS No.1290 AND 1291 OF 1997.

The Management of
The Coimbatore District
Consumers Co-op.
Wholesale Stores Ltd.,
R.S.Puram,
Coimbatore 641 002
rep. by its Secretary
M.Chinnadurai .. Petitioner in both W.Ps.

Vs.

1. The Appellate Authority
   under the Tamil Nadu
   Shops and Establishments
   Act (Dy. Commissioner
   of Labour)
   Coimbatore-641018

2. P.Vijayarajan .. Respondents in both W.Ps.

* * *

Writ Petitions filed under Article 226 of The Constitution of India, praying for the reliefs as stated therein.

* * *

For Petitioner : Mr.P.Anbarasan in both WPs.

For Respondents : Ms.V.Velumani,
Addl.Govt. Pleader for R1

Mr.N.G.R.Prasad
for M/s Row and Reddy
for R2 -do-

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COMMON ORDER

The above writ petitions have been filed praying to issue writs of certiorari, respectively to call for the records of the first respondent in TNSE No.9/94 and TNSE I.A.No.1/94 and to quash the orders passed therein respectively dated 9.10.1996 and 19.12.1994.

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2. On a perusal of the materials placed on record and upon hearing the learned counsel for both, it comes to be known that the second respondent was employed as a Salesman in the petitioner Cooperative Society having joined as such on 11.10.1972; that on 15.6.1985, an interview of the second respondent was published in the Tamil Magazine 'Thuglak' with the caption "Kovai Chinthamaniyil Thuglak", wherein the second respondent made allegations about the mal-practices in the institution; that since the action of the second respondent in allowing the magazine to publish an interview by making unfounded allegations against the petitioner's stores, was in violation of the Bye Laws, he was placed under suspension, pending disciplinary action by an order dated 15.6.1985; that subsequently, a charge sheet-cum-show-cause notice dated 13.7.1985 was issued to the second respondent; that without giving any explanation to the charge memo, he has preferred an appeal before the Registrar of Cooperative Societies, seeking to set aside the order of suspension dated 15.6.1985 and that by an order dated 30.7.1985, the Registrar of Co-operative Societies refused to interfere with the order of the petitioner dated 15.6.1985 and directed the second respondent to file an appeal before such Authority, if any.

3. The further case of the petitioner is that aggrieved against the order of the Registrar of Co-operative Societies dated 30.7.1985, the second respondent filed W.P.No.9127 of 1985 on the file of this Court and it was dismissed at the admission stage itself; that as against the said order, the second respondent preferred an appeal in W.A.No.785 of 1985 before the Division Bench of this Court and this Court set aside the order dated 30.7.1985 and directed the Registrar of Co-operative Societies to dispose of the revision petition of the second respondent on merits and that the Registrar of Co-operative Societies passed orders on 25.7.1986, dismissing the revision petition filed by the second respondent.

4. The further case of the petitioner is that after the issuance of show-cause notice dated 13.7.1985, since no explanation was forthcoming from the second respondent, the petitioner decided to hold the enquiry and opportunity was given to the second respondent to appear for the enquiry, but he refused to receive the notice sent by the Enquiry Officer; that the petitioner also published the said enquiry notice in the Tamil Daily "Malai Malar" dated 12.12.1985; that the second respondent sent a communication dated 12.12.1985, contending that he would participate in the enquiry only if the petitioner withdraws the order of suspension; that since the second respondent did not participate in the enquiry, an ex-parte enquiry was held and the Enquiry Officer found the charges proved; that based on the findings of the Enquiry Officer, the petitioner issued the second

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show-cause notice dated 21.4.1986, as to why the punishment of dismissal should not be imposed upon him and that since the explanation dated 8.5.1986 was not satisfactory, the petitioner dismissed the second respondent from service, by an order dated 3.6.1986.

5. The further case of the petitioner is that after receipt of the second show-cause notice dated 21.4.1986, the second respondent filed W.P.No.4913 of 1986, challenging the said show-cause notice and also filed W.P.M.P.No.7110 of 1986, seeking stay of the order passed by the second respondent and this Court, by order dated 29.5.1986 made in W.P.M.P.No.7110 of 1986 in W.P.No.4913 of 1986 stayed the show-cause notice and directed the Registrar of Co-operative Societies to dispose of the revision petition filed by the second respondent within two months; that the Registrar of Co-operative Societies dismissed the revision petition by an order dated 25.7.1986 and that against the said order, the second respondent filed W.P. No.7978 of 1986 and also filed W.P.M.P.No.18249 of 1986, seeking for stay of the order dated 25.7.1986 and the said W.P.M.P. was dismissed by this Court on 17.11.1986.

6. The further case of the petitioner is that since the revision petition was dismissed, the petitioner confirmed the dismissal order of the second respondent, by an order dated 30.8.1986; that as against the said order, the second respondent filed W.P.No.13070 of 1986 and this Court dismissed not only W.P.No.13070 of 1986, but also W.P. No.7978 of 1986, by a common order dated 6.7.1987; that against the order passed in W.P.No.13070 of 1986, the second respondent filed W.A.No.1410 of 1987 and the said writ appeal was dismissed on 27.10.1989 and that against the said order, the second respondent filed S.L.P. No.6449 of 1990 on the file of the Honourable Supreme Court and the said S.L.P. was also dismissed on 25.10.1991 with an observation that it was open to the petitioner to seek such relief as is available to him under law and to plead for condonation of delay.

7. The further case of the petitioner is that thereafter, the second respondent preferred a revision petition before the Joint Registrar of Cooperative Societies on 3.1.1992 under Section 153 of the Tamil Nadu Co-operative Societies Act, 1983 and the said revision petition was dismissed on 13.1.1992 on the ground of limitation; that the second respondent filed a review petition before the same Authority on 20.01.1992 under Section 154 of the said Act and by an order dated 17.8.1993, the said review petition was rejected by the same Authority; that the second respondent preferred an appeal before the first respondent on 19.1.1994 under Section 41 of the Tamil Nadu Shops and Establishments Act; that as there was an enormous delay in filing the said appeal, the second respondent filed an application in TNSE I.A.No.1 of 1994, seeking

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condonation of delay; that in the said application, the petitioner filed counter affidavit, stating that there was more than 7½ years delay in filing the appeal and no satisfactory reason has been adduced by the second respondent; that the said Authority, condoned the delay and numbered the appeal as TNSE No.9 of 1994; that the appeal was also allowed by an order dated 9.10.1996 and hence the petitioner would seek for the relief extracted supra.

8. Per contra, learned counsel for the second respondent, denying the allegations levelled against him would submit that the second respondent did not go to the Press and give interview; that the Press people came to the Society and interviewed higher officials viz. the Special Officer and the Superintendent and then only the second respondent was interviewed in the capacity of Secretary of the Chinthamani Janata Union, that too after obtaining permission from the then Special Officer; that the action is also discriminatory, because no action was taken against the other employees, who were interviewed; that the second respondent, as a responsible and sincere employee, had, with an idea of correcting the unwanted happenings in the Management, made representations to the Management also, with details of mal-practices prevailing at that time; that the information given by the second respondent to the Tamil Magazine dated 15.6.1985 was done not with the idea of bringing discredit to the Management and to the staff members of the Management; that on the information given by the second respondent, the Management issued a notice against several employees for charging excess price and misappropriation to the extent of Rs.1,69,038.80 and the same was remitted by the Management from the employees.

9. In support of his arguments, the learned counsel for the second respondent would cite a judgment of the Honourable Apex Court delivered in S.M.SAIYAD v. BARODA MUNICIPAL CORPORATION reported in A.I.R. 1984 S.C. 1829 wherein it has been held:

> "On dismissal order being found to be invalid and the direction for reinstatement having been given the workmen would be entitled to full back wages, unless the same can be denied on some relevant grounds. The denial of back wages for a portion of period for the reason that he was prosecuting remedy in a wrong forum would not be a relevant consideration for refusal of back wages. Further, the employer would be entitled to deduct the amount which the employee was earning during the period he was under suspension from the back wages payable to him."

On such arguments, the learned counsel for the second respondent would pray to dismiss both the writ petitions.

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10. In consideration of the facts pleaded, having regard to the materials placed on record and upon hearing the learned counsel for both, what this Court is able to assess is that charges have been framed against the second respondent/workman who was employed as Salesman in the first respondent Management to the effect that he gave statement to the Tamil fortnightly Magazine 'Thuglak' on 15.6.1985 in the manner bringing discredit to the staff members employed in the Textiles Sales Section; that he had falsely alleged that the Management was getting personal gains by not following official selling rate but fixing rates at their discretion; that he had caused allegations on the officers of the stores by giving a statement that they were obtaining commission for the procurements made by them and that he had also made false and malicious propaganda stating that mal-practices were widely prevalent in the procurement of grocery and vegetables. On such allegations, charges were framed against the second respondent by the petitioner Management.

11. The contentions of the second respondent before the first respondent as appellant were that the show-cause notice containing the charges have not been received by him. On the part of the Management, they would come forward to say that the show-cause notice was sent to the correct address given by the second respondent himself and that he received the same at 5/18, Gandhiji Road, Pothanur, Coimbatore as it could be seen from Ex.M.8. The second contention of the second respondent before the Deputy Commissioner of Labour was that the efforts made by the Management in conducting the domestic enquiry and issue of second show-cause notice was during the pendency of the subject before the High Court in W.P.No.4913 of 1986 which is against law for which on the part of the Management, they would answer that there was nothing wrong in conducting the domestic enquiry by the Management when the matter was pending before the Registrar of Cooperative Societies as directed by the High Court of Madras; that the restraint was only against the suspension order dated 15.6.1985 and the second show-cause notice dated 21.4.1986 and they too came to an end when the matter was disposed of by the Registrar of Cooperative Societies on 25.7.1986.

12. The Deputy Commissioner of Labour while agreeing that it is really unbecoming on the part of the employee giving statements against the Management to the Press thereby bringing discredit to the Staff Members and to the fair name of the Institution, however, would further state that the perusal of some of the documents filed by the second respondent revealed that the Management was suffering from mal-practices even earlier and would cite two previous instances of such mal-practices being exposed in two magazines viz. 'Thuglak' and 'Ananda Vikadan' by statements dated 2.10.1982 and 10.2.1983 and that the Union notice dated

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2.10.1982 also spoke about several mal-practices which were happening in the cement section and automobile section. The Authority below would further observe that there had also been hunger strike before the Collectorate, Coimbatore. Further more, even citing Exs.W.21 to W.23 which reveal the action taken on employees for criminal breach of trust, misappropriation, falsification of accounts etc. thereby revealing the sorry state of affairs of the Management prior to the interview to 'Tughlak' which is in issue, the Deputy Commissioner of Labour, held that the information that the second respondent gave to Tamil fortnightly magazine dated 15.6.1985 was not done with the idea to bring discredit to the Management and to its staff members, but with the bonafide intention of giving quietus to the activities which were really bringing discredit to the Management and accordingly he differed with the findings of the domestic enquiry and held the charges levelled against the workmen not proved and would set aside the order of dismissal from service against the second respondent.

13. Now, the only point for consideration and for answer by this Court is 'whether the conclusions arrived at on such arguments afore-extracted from the order of the Deputy Commissioner could sustain in law and on facts pertaining to the subject?'

14. At this juncture, it is relevant to extract the Special Bye Law No.9, which is governing the subject in hand:

> "No employee shall, except when generally or specifically empowered or permitted in this behalf by the committee communicate directly or indirectly a document of information which has gone into his possession in the course of his official duties or has been prepared or collected by him in the course of such duties either from official sources or otherwise to any other person, institution or to the press"

15. On the part of the Management, it would be strongly argued that divulging any information gathered by an employee in the course of discharge of his official duties is a serious misconduct and that the action of the second respondent in giving interview to the fortnightly magazine 'Tughlak' along with his photograph published therein is in total violation of Bye Law No.9, extracted supra, and therefore the Management is fully justified in dismissing the second respondent by its order dated 30.8.1986.

16. There is no denying of the fact that on the part of the second respondent, he divulged the information gathered in the course of discharge of his official duties and there cannot be any

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second thought that it is a serious misconduct and therefore it has to be held that the action of the second respondent in giving the interview to the fortnightly magazine 'Tughlak' along with his photograph to be published is in violation of the Bye Law No.9 and he becomes punishable in the manner known to the disciplinary laws governing the employees of the petitioner Management. However, the Deputy Commissioner of Labour, expressing the view that such interview given by the employee, the second respondent herein, has been done only with a good intention to do good to the Management, has concluded that the second respondent in giving the interview has not committed any delinquency which is a wrong analogy adopted on the part of the Deputy Commissioner of Labour.

17. Even in cases where mal-practices, corruption or mismanagement take place in such institutions, divulging the information by the employees and officers except when generally or specifically empowered or permitted in this behalf by the committee to communicate directly or indirectly a document of information which has gone into his possession in the course of his official duties or has been prepared or collected by him in the course of such duties either from official sources or otherwise to any other person, institution or to the press is undoubtedly an offence done in violation of the Special Bye Law No.9 for which the petitioner would only become liable to be punished accordingly and what he did was with good intention or with the general honest thought and common good of the Management, cannot set at naught the Bye Law No.9 nor is the Deputy Commissioner of Labour competent to overlook such legislatures and if every employee or Officer starts indulging in such activities in violation of the Bye Laws, what will be the net result has not been thought of or answered by the Deputy Commissioner.

18. Moreover, exposing such things, in violation of the Bye Laws, is not the remedy and there are many other ways and means wherein any employee or officer of the Management is encountered with such mismanagement or any illegal activity committed on the part of the Management or other Officers they could fight out the same in the legal manner and without adopting such legal avenues doing things in violation of the Bye Laws is not only undesirable but against the disciplinary laws and therefore the act perpetrated on the part of the second respondent individual cannot be justified in law under any circumstances. In such a situation the only course left with for this Court is to hold that the decision arrived at by the Deputy Commissioner of Labour either in justifying the act of the second respondent without having a mind to go through the Bye Law No.9 of the disciplinary law governing the employees of the Management nor having the least discussion on it or offering any reason as to how it could be fulfilled and ultimately arriving at the conclusion to set aside the decision of the disciplinary authority dismissing the second

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respondent is undoubtedly illegal, erroneous and liable to be quashed. The conclusions arrived at by the Deputy Commissioner of Labour would also serve as a bad precedent serving as an example for many more such violations to occur. In these circumstances, the only conclusion that this Court could arrive at is to allow W.P.No.1290 of 1997.

19. So far as W.P.No.1291 of 1997 is concerned, it has been filed challenging the order of the Deputy Commissioner of Labour in condoning the delay in preferring the appeal under the Tamil Nadu Shops and Establishment Act, 1947. Since it is the settled law that even if there is delay, the party should not be punished with denial of opportunity to contest the case wherein his substantial rights are involved and if the delay is more, the party could be mulcted with costs, the Deputy Commissioner of Labour has rightly arrived at the conclusion to condone the delay thus entertaining the appel preferred by the workman. Therefore, this Court does not find any illegality or inconsistency in the order passed by the authority below and hence this writ petition is liable only to be dismissed.

In result,

(i) W.P.No.1290 of 1997 is allowed.

(ii) The order dated 9.10.1996 made in TNSE.No.9/94 by the first respondent/Appellate Authority under the Tamil nadu Shops and Establishments Act (The Deputy Commissioner of Labour) Coimbatore is quashed.

(iii) W.P.No.1291 of 1997 is dismissed thereby confirming the order dated 19.12.1994 made in T.N.S.E.I.A.No.1/1994 by the first respondent/Appellate Authority under the Tamil Nadu Shops and Establishments Act (The Deputy Commissioner of Labour) Coimbatore.

However, in the circumstances of the cases, there shall be no order as to costs.

3.2.2005.

ssa/Rao

Sd/
Asst.Registrar

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Sub Asst.Registrar

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To

The Deputy Commissioner of Labour,
Coimbatore.(Appellate Authority under
the TN.Shops and Establishments Act)

1 cc to Mr.P.Anbarasan, Advocate, SR.4572

2 ccs to M/s. Row and Reddy, Advocate SR.Nos.4521 and 4520

2 ccs to Govt. Pleader, SR.4724

km (co)
dv

Common Order in W.P.Nos.1290
and 1291 of 1997.

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